IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 249 OF 2005.

1. Navnath Namdeo Mirgane
2. Shivaji Laxman Mirgane.
3. Bharat Vinayak Patil.
4. Rajendra Navanath Mirgane.
5. Shankar Navnath Mirgane.
6. Dilip Gangadhar Sopal.
7. Vishnu Pandhari Mirgane.
   All R/o. Mandegaon, Taluka
   Barwshi, Dist., Solapur. .... Petitioners.

Versus.

1. Borade Y.G.
   Adult, Occ.: Service,
   at present working as Assistant
   Charity Commissioner, Office of
   the Asstt.Charity Commissioner,
   Ratnagiri.

2. Chandrakant Appa Patil,
   Adult, Occ.: Service,
   Superintendent, Office of the Asstt.
   Charity Commissioner, Rajarampur
   Dist. Solapur.

3. Shri Deglurkar S.P., Adult, occ.:
   Service, Senior Clerk, Office of
   the Asstt.Charity Commissioner,
   Latur Region, Deewanji Complex,
   In front of S.T.Depot,
   Ambejogai Road, Latur.

4. Bhagwat Bhanudas Pyghan,
   Adult, Occ.: Agricutlure,
   R/o.Mandegaon, Taluka Barwshi, Contemnors/
   Dist. Solapur. ... Respondents

...

Shri I.M.Khairdi for the Petitioners.

Shri S.M.Railkar for the Respondent No.1.

Shri Machindra A.Patil for the Respondent No.2.

Shri S.A.Khan for Respondent No.3.

Shri S.G.Kudle for Respondent No.4.

CORAM : ABHAY S.OKA, J.

DATED : 26th March, 2007.

ORAL JUDGMENT.:

1. The submissions of the learned Advocates appearing for the parties were heard on the last date. According to the case of the Petitioners, the Respondents, in particular the 1st to 3rd Respondents, have committed a breach of the order dated 8th April 2005 passed by the learned Additional District Judge, Solapur as they have made entries in the Register maintained under the Bombay Public Trust Act, 1950 in breach of the said order.

2. The dispute relates to a public charitable trust which is registered under the Bombay Public Trusts Act, 1950. The 1st Respondent at the relevant time was holding the post of Assistant Charity Commissioner, Solapur. The 2nd Respondent was the Superintendent in the office of the Assistant Charity Commissioner, Solapur and the 3rd Respondent was working as a Clerk in the said office. The Petitioners filed a change report under section 22 of the said Act of 1950. The change report was accepted by the learned Assistant Charity Commissioner. The 4th Respondent challenged the order of the learned Assistant Charity Commissioner by preferring an Appeal before the learned Joint Charity

Commissioner at Latur. The said Appeal was allowed by Judgment and order dated 12th August 2002. In the said Appeal, after disposal of the Appeal, on an application dated 20th August 2003 made by the present Petitioners an order was passed directing that status-quo be maintained in respect of PTR entries till 5th September 2003. During the pendency of the application under section 72 of the said Act of 1950 before the District Court, the learned Additional District Judge passed an order on 18th November 2003 directing that the implementation and execution of the order passed by the Joint Charity Commissioner will remain stayed till the final disposal of the Appeal. In a writ petition, by order dated 23rd February 2005, the said order dated 18th November 2003 was vacated. However, this Court directed that status-quo as on the date on which the Joint Charity Commissioner decided the Appeal will be maintained. The Application under section 72 of the said Act of 1950 was dismissed by the District Court. Thereafter a First Appeal was preferred by the Petitioners to this Court which has been dismissed.

3. The learned Counsel appearing for the Petitioners pointed out that after the Appeal was preferred by the 4th Respondent before the Joint Charity Commissioner was dismissed, an order was passed on 20th August 2003 directing that the status-quo shall be

maintained in respect of the Public Trust Register entries till 5th September 2003. He pointed out that after the learned Joint Charity Commissioner allowed the Appeal, the present Petitioner filed an application under section 72 of the said Act of 1950 before the District Court. In the said Application, an ad-interim order was passed on 5th September 2003 directing both the parties to maintain status-quo pertaining to the Public Trust Register. The interim application made by the Petitioners was allowed by order dated 18th November 2003 and it was directed that the order dated 12th August 2003 passed in Appeal by the Joint Charity Commissioner will remain stayed. The 4th Respondent challenged the said order by preferring a Writ Petition in this Court. The said Writ Petition was disposed of by order dated 23rd February 2005. The learned Advocate for the Petitioners pointed out that though the order of stay granted by the Additional District Judge was set aside, this Court specifically directed that the status-quo as on the date on which the learned Joint Charity Commissioner passed the order will continue to operate till the application was decided by the District Court. The allegation made in the petition is that on 23rd March 2005 at the instance of the 4th Respondent, the 2nd and 3rd Respondents entered various names in Schedule I of the Public Trust Register. It is alleged that initially the said entry was signed only by 2nd and

3rd Respondents. After the Petitioners became aware about the said entries, an application was made by the Petitioners before the 1st Respondent. According to the case of the Petitioners, the 1st Respondent assured that the said entries will be struck out and the earlier position will be restored. It is alleged that the 1st Respondent countersigned the entries on 6th May 2005. In the meanwhile on 8th April 2005, the District Court rejected the Application under section 72. However, the District Court extended the order of status-quo till the Appeal was filed. The allegation of the Petitioners is that firstly the entries were made in breach of the order of status-quo dated 23rd February 2005 passed by this Court and secondly the 1st Respondent countersigned the entries on 6th May 2005 and thus there is a gross breach of the orders passed by the Court.

4. I have heard the learned Counsel appearing for the 1st and 2nd Respondents. I have perused the affidavits filed on record.

5. It must be noted here that the final orders passed by the learned Joint Charity Commissioner and the learned Additional District Judge have been confirmed by this Court by Judgment and order dated 28th March 2006 in First Appeal No.1261 of 2005. The confirmation is on the ground that the Change Report filed by the

Petitioners was in respect of the election held on 20th August 2000 and even according to the case of the Petitioners, the term of the Committee elected on that day was for three years. It was observed in the order that the dispute in the Appeal had become academic and the Change Report filed for recording the change on the basis of the subsequent elections has already been accepted.

6. I have perused the affidavit of the 1st Respondent who was acting as an Assistant Charity Commissioner at the relevant time. He has stated that the Application made by the Petitioners was fixed before him on 29th March 2005. He stated that the said application was not placed before him by the 2nd and 3rd Respondents and neither the Advocate for the Petitioners nor the Advocate for the fourth Respondent appeared on that day. In the affidavit he has stated that the 3rd Respondent brought to his notice that the Application made by the Petitioner before the District Court has been dismissed on 8th April 2005. He has stated that a copy of the said order was not received by his office. He has stated that he signed the entries in Schedule I made on 23rd March 2005 on 6th May 2005. He has stated that he was under a bonafide impression that the Application made by the Petitioners was dismissed on 8th April 2005 and he was not aware about the further order

passed by the District Court.

7. I have also perused the affidavit of the 3rd Respondent. The 3rd Respondent has stated that when he carried out changes in Schedule I on 23rd March 2005, he was not aware about the order of status-quo. He has referred to the application dated 1st March 2005 filed by the 4th Respondent.

8. The 2nd Respondent has also filed an affidavit. He has referred to the entry made by the 3rd Respondent on 23rd March 2005. He has stated that the register was forwarded to him in the routine course, and he signed the said register. He has also stated that the Advocate appearing for the Petitioners thereafter brought to his notice the order of status-quo.

9. If the record of the Contempt Petition is perused, it is apparent that the 2nd and 3rd Respondents made entry on 23rd March 2005 contrary to the interim order which was operating. The 1st Respondent signed the said entry on 6th May 2005 though there was protection granted by the District Court by order dated 8th April 2005. The 1st to 3rd Respondents have pleaded ignorance about the order of statusquo which was in operation. Though it is very difficult to say that there is a deliberate or willful breach on the part of

the said Respondents of the concerned orders, it will have to be said that the said Respondents have not taken due care and caution which was excepted of them considering the fact that they were aware about the pendency of the proceedings regarding the disputed Change Report.

10. So far as the 4th Respondent is concerned, it appears that the 3rd Respondent had acted on the basis of the Application made by him. However, it is very difficult to say that the 4th Respondent had committed breach of the order of status-quo because the order of status-quo was relating to the entries in the Public Trust Register which could have been altered or changed only by the 1st to 3rd Respondents. The dispute regarding the entries in the Register has now become academic.

11. The 1st to 3rd Respondents have tendered an apology. The same is accepted. Subject to what is stated above, no case is made out for taking action under the Contempt of Court Act, 1971 against the said Respondents. Hence the notice issued to the Respondents is discharged. Petition is disposed of.

Judge.